

SPRING 2006

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Journal of Consumer Advocacy



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WORKER

Navigating Oklahoma's Workers' Compensation System Now Requires Expert Help

Workers' Compensation "reform" is a frequent topic of discussion at the Legislature, and this past session was no exception. Oklahoma lawmakers modified our Workers' Compensation system to cause the most sweeping changes to it in the last three decades.

A few of the the major changes that affect injured workers are reviewed here. But now, more than ever, an injured worker in Oklahoma needs the help of an attorney skilled and knowledgeable in the area of Workers' Compensation law.

One of the most drastic changes in our Workers' Compensation system deals with the worker's ability to choose his or her own treating physician. As it stands now, the employer gets to pick the treating physician and that treating physician's opinion is presumed to be correct unless challenged by the worker's attorney. However, the law does allow a change of physician upon the worker's request but it is not easy.

Other changes were made regarding the requirements for a worker to receive permanent partial disability benefits. Injured workers now must demonstrate that they have a permanent and anatomical abnormality as a result of the injury, before any permanent disability may be allowed. Obviously, some injuries - such as soft tissue injuries, hearing loss, impairment of pulmonary function - are such that it is difficult, if not impossible, to meet the burden of proof.

Finally, the Legislature has limited post-termination claims to six months following the injury. This is a very big obstacle for workers whose injury on the job does not become immediately apparent.

Suffice it to say, there have been many changes in our state's Workers' Compensation system - too many to cover in any one article. The key point to remember is that specific issues related to on the job injuries should be directed to an attorney competent and knowledgeable in the area of Workers' Compensation.

certiorari, (ser-she-eh-ra-re) noun [Latin, to be informed]; to be informed as a means of gaining appellate review; a common writ.

When at least four of the nine U.S. Supreme Court justices vote to hear a case, the court issues a writ of certiorari.

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CONSUMER INFORMATION FOR THE CLIENTS AND
FRIENDS OF FRASIER, FRASIER & HICKMAN, LLP

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CASE FILE

Electrocution Case Settled Out of Court

Frasier, Frasier & Hickman LLP recently settled a case alleging negligence in the death of a construction employee.

Dan Steward was an employee of Cherokee Builders Inc. working on a project to install concrete sound barrier walls along U.S. 169 in Tulsa in April 2004. Employees of a subcontractor, Bennett Steel Inc., were operating a crane to set a large concrete form when the crane and its cabling came into contact with an overhead electric power line. Steward, who was helping guide the form into place, was electrocuted.

Steward left a wife and three small children and the family retained Frasier, Frasier & Hickman LLP. Although Mrs.

Steward received Workers' Compensation benefits, the investigation determined that Bennett Steel had been negligent.

A lawsuit alleging negligence was filed in state district court against Bennett Steel, which in turned filed suit against Cherokee Builders. Before the case could go to trial, the case was settled out of court.

"Mrs. Steward and the children have been taken care of but nothing can bring their husband and father back," said Jim Frasier.

"Construction sites can be dangerous work environments, even in the best circumstances. Although these can be very good jobs, construction workers should always be very cautious."

EDUCATION

Scholarship Applications Available

The Julia Fredin Frasier Foundation is accepting scholarship applications from high school seniors preparing to continue their education. The Foundation also is accepting renewal applications for those students who have previously received scholarships.

Applications for new and renewal scholarships may be obtained by calling, writing

or coming into the office of Frasier, Frasier & Hickman LLP. The application deadline is June 1, 2006.

Julia Fredin Frasier passed away in 1996. She was married to Tomy Frasier for 50 years. The Foundation was organized in recognition of her great interest in the education of young people. During her life, Julia Frasier financially helped many students and encouraged many more to continue their education.

Hospital Errors More Deadly Than Motor Vehicle Accidents, Breast Cancer, or AIDS

Can you imagine going into the hospital for heart or knee surgery, only to run into serious complications – or even die – because an everyday error that could have been avoided?

According to the Institute of Medicine's landmark 1999 report, 98,000 hospitalized Americans are killed each year and 1 million more are injured due to preventable medical errors. The report found that even using a lower estimate, more people die in U.S. hospitals each year from medical errors than from motor vehicle accidents, breast cancer or AIDS.

There are several things the Agency for Health Care Research and Quality recommends that hospitals should do to prevent errors. These are things that you as a patient and family member of a patient can demand.

- **The single most important way you can help prevent errors is to be an active member of your health care team.** That means taking part in every decision about your health care. Research shows that patients who are more involved with their care tend to get better results. Have a family member come with you to ask additional questions. Bring a list of questions you would like the doctor to answer.

For more information and additional resources, click these websites:

- Patient Advocacy and Hospital Error Prevention at <http://www.okccps.org/okccps.site/resources/patientAdvocacy.htm>
- Oklahoma Board of Medical Licensure and Supervision at <http://www.okmedicalboard.org>

- **Make sure your provider wears gloves** before handling your tube, called a central line, uses a specific skin antiseptic and removes the tube as soon as possible to prevent infections that kill about 14,000 patients a year. Additionally, you should ask and make sure everyone cleans his or her hands before coming in contact with you or your loved one.

- **Elevate the head of the bed** and follow specific treatment guidelines to prevent patients on ventilators from getting pneumonia, which kills about 26,000 patients a year.

- **Keep track of your history and be sure that all health professionals involved in your care have important health information about you.** Write down your medical history including any medical conditions you have, illnesses, immunizations, allergies, hospitalizations, all medications and dietary supplements you're taking, and any reactions or sensitivities you've experienced. Bring this list with you to your doctor appointments and hospital.

- **If you need surgery,** ask who will oversee any resident who will be performing an operation. Check the physician or surgeon's background information through the Oklahoma Board of Medical Licensure and Supervision. There are a number of other steps you can take to check the doctor's history such as looking them up on Google, and making sure he or she is a surgeon who specializes in the procedure you are going to have performed.

- **Ask a family member or friend** to be there with you and to be your advocate (someone who can help get things done and speak up for you if you can't). Even if you think you don't need help now, you might need it later.

—Courtesy of Oklahoma Center for Consumer and Patient Safety

Center for Safety Asking Big Questions, Seeking Big Solutions

A new advocacy and awareness organization has been formed to focus on consumer and patient safety.

The Oklahoma Center for Consumer and Patient Safety is based in Tulsa and works statewide to raise awareness of issues, policies and legislation that threaten consumer and patient safety.

"Most consumers and patients usually don't have the time or knowledge to focus on issues that could affect their safety," said Executive Director Hugh Robert. "The Oklahoma Center for Consumer and Patient Safety produces and disseminates timely and informative analysis and information on public policy issues that impact consumer and patient safety across Oklahoma."

To that end, the Center has put together a number of resources in such areas as patient advocacy, avoiding hospital mistakes, and understanding the pitfalls of credit card terms.

The Center is an incorporated non-profit organization funded by private donations. The Center is non-partisan and does not endorse candidates. As an issue-oriented organization, however, the Center hopes to inspire discussion on both sides of the political landscape as to how we as a state and country can better govern ourselves.

"Our goal is to educate and provide tools to our citizens. We want to create an avenue to ask big questions that lead to big solutions," said Robert. "The Center will fight to make sure the voices of consumers and patients are heard in Oklahoma City and Washington."

- **For more information on the Oklahoma Center for Consumer & Patient Safety – or to subscribe to its newsletter and Action Alerts, call 800-994-6025 or visit the Center's website at www.okccps.org.**



“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.”

**Franklin D. Roosevelt
January 20, 1937**

If the Supreme Court rules the petition signatures insufficient, expect another petition drive or legislative assault.

Oklahoma has been “red-lined” by fiscal conservatives because of the passage of Right-to-Work and a sympathy by many in government and business to other “no growth” policies that restrict or hamper our Legislature from funding basic, essential services.

Oklahoma’s working families must wake up to the fact that we are under attack and stay alert. The forces of fiscal conservatism that would ignore those persons who need help the most – our youngest and oldest citizens, and those with mental and physical challenges – have targeted our state. Oklahomans must come together to turn away this assault and clear the air.

—Jim Frasier

So-called “Right to Work” is a bad deal for working people. It stinks. And it is made smellier by the lie the title implies.

A similar stench surrounds the so-called Taxpayers’ Bill of Rights – TABOR, for short. It, too, smells to high heaven, although its innocent, well-meaning name suggests otherwise.

In fact, TABOR is one of the most insidious concepts to be introduced in the governance of Oklahoma and it threatens to be as harmful to the interests of working people as other recent stinkers operating under disguise much like Right-to-Work and, recently, “tort reform.”

TABOR advocates – mostly from outside Oklahoma – want to amend the state constitution and introduce a formula that would control state spending. A similar measure in Colorado sent the state into a fiscal crisis and caused funding for basic services to erode and prevented lawmakers from responding to changing circumstances in a timely manner.

Although Colorado voters finally rejected TABOR last year, its proponents launched an initiative petition in Oklahoma to put a constitutional amendment on the ballot. Even though the Colorado experience was disastrous, causing basic services in education, health, and social services to be drastically cut, thousands of Oklahomans nevertheless signed the TABOR petition - State Question 726.

Recently SQ 726 supporters reported they gathered a sufficient number of signatures but the matter is being challenged in the state Supreme Court. Even leaders in the business community are publicly opposing TABOR and SQ 726.

If SQ 726 goes to a vote, expect conservative Republican forces to descend on Oklahoma from across the country to push TABOR.

CASE FILE

Unsafe Road Remains Unchanged Despite Claiming Lives

LaDonna Thompson and Danya Tiger were returning home to Pawnee late one night in March 2000, after a night on the town in nearby Stillwater. The women were traveling down a paved Payne County, Oklahoma, road when suddenly they were in the water.

Both women drowned. The road they were traveling on simply ended at a steep embankment falling into Lone Chimney Lake. There were two warning signs alongside the unlit, rural road but no barriers of any kind. The roadway simply ended a few yards from the shoreline.

Thompson was survived by six children. Frasier, Frasier & Hickman LLP was retained to investigate the

case on behalf of her estate.

The road was maintained by the Payne County Commissioners who knew of the road’s dangerous condition but had done little to correct the situation.

“One commissioner knew of another similar case where a vehicle had run off the end of the road into the lake. The county’s response was to put up another warning sign along the road,” said Jim Frasier.

A lawsuit was filed on behalf of Thompson’s estate in district court alleging Payne County Commissioners and the rural water association that operated the lake were negligent for failing to maintain

the road in a safe manner. The case was settled out of court with a money judgment awarded to Thompson’s estate.

Motorists should always be cautious behind the wheel – particularly when traveling an unfamiliar road. It is easy to assume that public roadways are being maintained in a safe manner. But, as this case illustrates, this all too often is not the case.

And what is the condition of the road now, some six years later?

“The road is in the same condition as it was when Ms. Thompson and her friend died. Nothing has changed. No barricade. Nothing.”